

The Criminal Law Section of the Washtenaw County Bar Association urges caution in adopting the jury reform proposals published in July 2006. Proposals to allow a judge to summarize and comment on testimony, jurors to discuss the case prior to deliberations, and parties to present argument during presentation of the evidence undermine the right to counsel and the right to trial by jury.

Many of the proposals offered by the Michigan Supreme Court would adopt current criminal procedures to civil litigation. For instance, in criminal cases, the rules permit jurors to ask questions of witnesses through the judge and take notes during trial for use in deliberations. Judges are free to provide written instructions to the jury and the rules regarding opening statements limit both sides to statements regarding the evidence. The Supreme Court's proposed changes would permit or encourage these procedures in civil jury trials.

However, other proposals, which also appear directed toward civil trials, do not easily translate to the criminal arena. The Court proposes to allow jurors to discuss evidence prior to the conclusion of a trial. It also would allow attorneys to argue their cases before the case is fully presented. Both proposals would have a devastating impact on the right to a jury trial. A fair and impartial jury is not a jury that makes a decision before it has heard all of the evidence.

Another proposed reform is not a "reform" at all. Case law already permits a trial judge to "fairly and impartially sum up the evidence" and to "comment to the jury about the weight" or importance of certain evidence. *People v Anstey*, __ Mich __; 719 NW2d 579 (2006). This practice, however, is rarely seen in criminal courts because of the obvious danger of improperly influencing the jury's verdict. What virtue exists in encouraging trial courts to engage in a risky practice?

The Criminal Law Section does not oppose all of the suggested reform proposals. Some, such as permitting attorneys to present jurors with "reference documents and notebooks" that contain witness and exhibit lists, statutory provisions and "other appropriate information," could enhance a defendant's right to trial and the effectiveness of his counsel. However, in the context of criminal jury trial, we believe any proposed change must be weighed against the criminal defendant's right to counsel and an impartial jury. As Thomas Jefferson said, trial by jury is "the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." That right must not suffer by reform for reform's sake.